

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**CARBC No.80 of 2025
Decided on 27.05.2026
Reserved on 07.05.2026**

M/s Ganga Ram and sons

...Petitioner

Versus

The Engineer-in-Chief HPPWD and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? No.

For the petitioner:

**Ms. Sunita Sharma, Senior
Advocate, with Mr. Saurav
Upadhyay, Advocate.**

For the respondents :

**Mr. S.D. Vasudeva, Deputy Advocate
General.**

Ajay Mohan Goel, Judge

These objections under Section 34 of the Arbitration and Conciliation Act are directed against the award passed by the learned Arbitrator, in terms whereof, the claim of the petitioner/objector has been partly allowed by the learned Arbitrator.

2. Brief facts necessary for the adjudication of this petition are that the work of the construction of Kyari-Gundah road portion 15/1 to 19/200 kilometers was awarded to the

claimant on 20.06.2006. The cost of the work was Rs.34,82,019/-. The work was to be completed within one year, which was to be reckoned from the 15th day of the issuance of letter. During the execution of the work, a dispute arose and the same was referred for arbitration to the Sole Arbitrator Sh. Ravinder Thakur, Advocate. The claimant put forth the following claim before the learned Arbitrator:-

"1. Balance work payment:

a). The contractor was awarded the work for approximately 35 lacs and the payment received by the contractor as per work done certificate and M.B. concerned, is only approximately 9 lacs. So the balance work payment i.e. 35 lacs-9 lacs + 26 lacs(approximately) may be paid to the contractor.

2. Ideal Machinery charges:

a). The machineries which were arranged and hired strictly for the construction of this work stood ideal for a period of 9 months i.e. from 1 April, 2008 to 31st Dec. 2008. So the ideal machinery charges of 9 months may be paid to the contractor. The detail of the machineries, which were hired for this work is as under:-

<i>Sr. No.</i>	<i>Machinery</i>	<i>Nos</i>	<i>Rate</i>	<i>Amount of 9 months</i>
<i>1</i>	<i>JCB</i>	<i>2 Nos</i>	<i>12000/- per dayx30 days=3,60,000 per month</i>	<i>32,40,000</i>
<i>2.</i>	<i>L&T</i>	<i>1 Nos</i>	<i>1000/- per day x30 days =3,00,000 pr month</i>	<i>27,00,000/-</i>
<i>3.</i>	<i>Air Compressor s</i>	<i>2Nos</i>	<i>4000/- per month of 2 compressors</i>	<i>3,60,000/-</i>
<i>4.</i>	<i>Tractor with trolley</i>	<i>1 No</i>	<i>20000/- per month</i>	<i>1,80,000/-</i>

5.	Labours	15 Nos	90,000/- per month	8,10,000/-
			Total ideal machinery claim	72,90,000 (Rupees seventy two lacs and ninety thousand only)

3. Loss of Profit :-

a). Due to the complete negligence of the department, the contractor was deprived of executing the balance work of approximately 26 lacs, which contractor would have successfully completed, in case the land dispute problem at site had been solved by the department and he court stay orders had been vacated. So loss of profit of 25% is claimed by the contractor on the balance of work of 26 lacs i.e. 25% of 26 lacs approximately 7 lacs is also claimed.

4. Security amount deducted from the running bills.

Any amount which has been deducted from the running bills in the form of securities and entered in the MB's may kindly be released to the contractor at the earliest.

5. Interest of Total amount claimed Rs. 1,06,90,000/-. Interest @ 18% on total amount of claim for 9 months approximately Rs. 13,50,000/- Total amount Rs. 1,20,40,000/- (one crore twenty lacs and forty thousand only).”

3. Opposing the same, it was the stand of the Department before the learned Arbitrator that the site was free from all encumbrances and was handed over to the claimant. The contractor executed the work from Kilometer 15/0 onwards upto 16/825 and thereafter stopped the work and removed his machinery and manpower from site and that too without any intimation to the Department. According to the Department,

the amount which was payable to the contractor for the work executed by him was duly paid.

4. It is recorded in the impugned award that during the pendency of the proceedings on the request of the claimant, the spot was visited with the consent of the parties on 26.07.2014 and spot inspection revealed that road from 15/0 kilometer to 16/825 kilometer stood constructed by the claimant. However, no machinery was found at the spot. The claimant/contractor himself stated that after construction of the road upto 16/825 somewhere in the year 2008, he had removed the machinery and labour deployed for the work on account of an ex party stay order obtained by Sh. Salku Ram qua the work in issue.

5. The award also reveals that though it was the claim of the claimant that he had also constructed the road from 12 kilometer to 15 kilometer, but on the spot when confronted by local residents who claimed that road from 12 kilometer to 15 kilometer was constructed by some other contractor, the claimant conceded to the same.

6. The award also demonstrates that the claimant admitted that as per the measurement of road constructed by him from 15/0 to 16825 he had received the entire payment of the amount of Rs.15,48,891/- in four running bills.

7. Learned Arbitrator held with regard to claim No.1 i.e., balance of work payment that in the light of the fact that the contractor had executed the work from kilometer 15/02 to 16/825 only and abandoned the work thereafter on the pretext of stay order and as the contractor stood paid for the work executed by him as total some of Rs.15,48,891/- was paid to him in four running bills, nothing was payable to the claimant under claim No.1.

8. With regard to claim No.2 i.e., idle machinery charges, learned Arbitrator held that the claimant had pointed out that certain machineries i.e., two JCB, one L&T, Two Air Compressors and one Tractor Trolley alongwith 15 labourers were arranged and hired for construction of road which remained idle from 01.04.2008 to 31.12.2008 and on this count, the claimant had claimed an amount of Rs.72,90,000/-, but in support of this contention, no evidence was placed on record

by the contractor and in the absence of any documentary proof to demonstrate said facts, this claim was denied by the learned Arbitrator to the claimant.

9. With regard to issue No.3 that is loss of profit, learned Arbitrator held that according to the claimant, because of the negligence of the Department on account of land dispute etc., as well as stay order, he was deprived from executing the balance work worth Rs.26 lacs and on account thereof he has suffered losses i.e., 25% of the value of the balance work which comes to Rs.7 lacs, whereas, the stand of the Department was to the contrary. As per the Department, the contractor had himself stopped the work and had removed the machineries and labourers from the site of work without intimating the Department. It was further the stand of the Department that there was no stay whatsoever regarding the execution of the work beyond 16/825 kilometers. Learned Arbitrator further held that perusal of the complaint demonstrated that in the Civil Suit filed for injunction, only the claimant contractor and one private individual were impleaded as parties and the contractor after receiving the ex-parte order did not care to contest the Civil Suit

nor any written request was made to the Department for getting the issue settled. Learned Arbitrator also observed that though the ex parte stay order was passed somewhere in the year 2008 and execution of the work was stopped by the contractor, however, neither the Department nor the contractor made any attempt to get the stay vacated. On these basis, learned Arbitrator held that the plea of the contractor that he was deprived of the execution of the balance wok was not correct, more so, when the work contract was kept alive and, therefore, the contractor was not entitled for the said claim. Thereafter, learned Arbitrator held that in case the work is rescinded for any reason and contractor is not allowed to execute the work, in that eventuality on account of loss of profit, the contractor shall be entitled to an amount of Rs.1,94,000/- i.e., 10% of the value of balance work.

10. With regard to claim No.4 and 5, learned Arbitrator held that as the contract was still alive and if the claimant is allowed to execute the remaining work and he completes the same within reasonable time, he will be entitled for the refund of security, but if the work is rescinded, then, the contractor

shall be entitled for refund of security amount alongwith interest @8% from the date mentioned therein.

11. As far as interest is concerned, the prayer thereof was rejected and limited relief of interest @8% on an amount of Rs.1,94,000/- was awarded in favour of the claimant.

12. Feeling aggrieved, the claimant has filed this objection petition.

13. Learned Senior Counsel for the petitioner has vehemently argued that the award passed by the learned Arbitrator is not sustainable in the eyes of law as the learned Arbitrator has not at all appreciated the contention of the claimant while deciding the claim. Learned Senior Counsel submitted that as it was evident that the work could not be executed by the claimant on account of the stay order that was passed by the Court, learned Arbitrator erred in not appreciating that the petitioner was entitled for damages on account of the non-execution of the work as also for damages on account of loss of profit. Learned Senior Counsel also submitted that the award was against the public policy as learned Arbitrator had not taken into consideration the evidence

led by the petitioner, in the correct perspective qua the deployment of labour as well as machinery on the site. Accordingly, learned Senior Counsel submitted that as the award passed by the learned Arbitrator is not sustainable in the eyes of law, the same be set aside. No other point was urged.

14. On the other hand, learned Deputy Advocate General submitted that as the Department had accepted the award and had decided not to assail the same, therefore, the same being a reasonable award, calls for no interference.

15. Having heard learned Senior Counsel for the petitioner as well as learned Deputy Advocate General and having perused the award under challenge, this Court is of the considered view that in the facts and circumstances involved herein, the petitioner is not entitled for any relief.

16. In terms of the judgment of the Hon'ble Supreme Court on the scope of interference under Section 34 of the Arbitration and Conciliation Act against an award in issue, it is now well settled that the arbitral award should not be interfered with in a casual and cavalier manner, unless the Court comes to the conclusion that perversity of the award goes to the root of

the matter. Hon'ble Supreme Court has also held that the provision of Section 34 is different and is not to be equated with appellate jurisdiction. Hon'ble Supreme Court has held that the mandate under Section 34 is to respect the finality of the award and if the Courts were to interfere with the arbitral award in usual courses on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution would stand frustrated.

17. Coming to the facts of the present case, learned Arbitrator rejected claim No.1 and 2 by holding that the claimant could not demonstrate that the payment for the work executed was not released in his favour by the Department. In fact, an observation has been made in the award by the learned Arbitrator that when the site was visited at the time of spot inspection, the claimant had admitted that for the work executed by him, the entire payment of Rs.15,48,891/- was released in his favour in four running bills.

18. Similarly with regard to claim No.3, learned Arbitrator by referring to the respective contention of the parties and material on record observed that after the stay order was

passed by the learned Civil Court in the Suit filed for rejection, the contractor who was a party defendant in the Civil Suit did not take any step for the vacation of the stay nor he appeared before the learned Court. Learned Arbitrator also held that the contractor did not even approach the Department for the vacation of the stay etc.

19. With regard to issue No.4 and 5, learned Arbitrator returned the findings that as the contract was alive, therefore, if the claimant was allowed to execute the remaining work and he completed the same within some reasonable time, the contractor shall be entitled for refund of security, but, if the work is rescinded, then he shall be entitled for refund of security alongwith interest.

20. This Court is of the considered view that in the peculiar facts of this fact, it cannot be said that the award passed by the learned Arbitrator suffers from any perversity so as to entail interference under Section 34 of the Arbitration and Conciliation Act by this Court. In terms of the award, learned Arbitrator took into consideration the respective contention of the parties and thereafter has returned his findings. Obviously,

as this Court in exercise of its power under Section 34 of the Arbitration and Conciliation Act is not to act as an Appellate Court and substitute its view for that of the contractor if another view was possible, in the absence of any grave perversity being demonstrated by the learned Senior Counsel for the petitioner, this Court sees no reason to interfere with the award.

21. The arguments raised by the learned Senior Counsel that the evidence led by the contractor was not appreciated in the correct perspective could also not be proved before the Court in the course of arguments as it could not be pointed out as to which evidence was misread or misappreciated by the learned Arbitrator.

22. Therefore, in the light of the above observations as the award passed in the present case does not call for any interference under Section 34 of the Arbitration and Conciliation Act, this petition is dismissed.

23. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

May 27, 2026
(*Vinod*)